

**THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI**

IBA/23/KOB/19

Under Section 7 of IBC, 2016 r/w rule (4) of IB(AAA) Rules, 2016

Order delivered on 13.9.2019

Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

In the matter of

1. Rita Venugopal,]
Srilekshmi, Opposite Chithranjal Theatre,]
Cherthala P.O.,]
Allappuzha District 688 524.] : Financial Creditor/Applicant

2. Dr.K.S.Venugopal,]
Srilekshmi, Opposite Chithranjal Theatre,]
Cherthala P.O.,]
Allappuzha District 688 524.]

Vs.

Dewa Projects Pvt Ltd]
Regd Office: S.S.Kovil Road,] : Corporate Debtor/Respondent
Thampanoor P.O., Vanchiyoor,]
Thiruvananthapuram – 01.]
Corporate Office: Marine Drive,]
Near Goshree Bridge, Cochin-18]

Parties/Counsels Present:

For Financial Creditor/Applicant : M/s. Ninan and Mathew, Advocates

For Financial Debtor/Respondent : None

ORDER

1. The Present application is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the 'Code'), read with rule 4 of the Insolvency



and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') jointly by the Financial Creditors who are also 'home buyers' (for brevity 'Applicants'), with a prayer to trigger Corporate Insolvency Resolution Process in respect of/s Dewa Projects Private Limited (for brevity 'Corporate Debtor').

2. It is appropriate to mention that the Corporate Debtor Dewa Projects Private Limited was incorporated on 12.04.2005, having CIN U70101KL2005PTC018111 and its registered office is situated at TC/25/1497 SS KOVIL ROAD, THAMPANOOR, GPO TRIVANDRUM, VANCHIYOOR VILLAGE, THIRUVANANTHAPURAM - 695 001, KERALA.

3. As per averments made in the application, the financial creditors entered into an Agreement for Sale dated 21.08.2013 with Ansu Enterprises Private Limited, a company incorporated under the companies Act, 1956, having its registered office at B-60-63, PIPDIC Industrial Estate, Mettupalayam, Puducherry and Corporate Office at 14, Sreenagar, Manacaud p.O , Trivandrum- 695 009 represented by its Director Mr. K. Venugopalan Nair towards a land admeasuring 632.02 cents (255.78 Ares) (Hereinafter referred as 'Property') in Sy. No. 843, in Ernakulam Village, Kanayannur Taluk, Ernakulam District.

4. M/s Ansu Enterprises, before its registration as Ansu Enterprises Private Ltd (Hereinafter referred as the 'Vendor') had entered into a Development Agreement dated 31.07.2010 for construction of residential buildings and other structures in the said property with the Corporate Debtor, and the said agreement is binding on M/s Ansu Enterprises Private Limited.



5. Thereafter, the Corporate Debtor proposes to construct a multi-storied residential complex by name "DEWA PIER 20" for those who are desirous of purchasing the proportionate undivided shares of the land.

6. The Financial Creditors approached M/s Ansu Enterprises for purchase of 268.95 Sq.ft (24.99 Sq.Mtr) (hereinafter referred as 'Scheduled Property') undivided shares in the property for construction by or through the Corporate Debtor as per the Agreement of Construction dated 21.08.2013 between the Financial Creditor and Corporate Debtor, of an apartment of 02 Type D (Tower 2E) on the 8th floor east side in the proposed multi-storied building complex, together with the usage, right and all easements attached to the scheduled property with rights, liabilities and restrictions in regards to the possession, ownership and enjoyment thereof. The Vendor has entered into a Development Agreement dated 31.07.2010 with the Corporate Debtor for construction of residential building and other structures in the said property.

7. The total consideration payable for the property shall be a sum of INR 83,45,581 (Rupees Eighty-Three Lakhs Forty-Five Thousand Five Hundred and Eighty one only) by the Financial Creditor to the Vendor through the Corporate Debtor. The financial Creditors undertakes to pay the consideration of INR 70,98,979/- (Rupees seventy lakhs ninety eight thousand nine hundred and seventy nine) along with the consideration for the undivided shares of land amounting to INR 12,46,602/- (Rupees Twelve Lakhs forty six thousand six hundred and two), payable to the vendor aggregating INR. 83,45,581/- (Rupees Eighty-Three Lakhs Forty Five Thousand Five Hundred and Eighty one only). Out of which the Financial Creditor had paid a sum of INR 12,46,602/- (Rupees Twelve Lakhs Forty-Six Thousand Six Hundred and Two

Only) as advance towards the undivided shares in land, the receipt of which was acknowledged by the Vendor.



8. The Vendor agrees to convey and transfer to the Financial Creditor, the undivided share and interest as on completion of the payment of the consideration thereof agreed subject to certain conditions stipulated.

9. The Financial Creditor undertakes to pay the sum of INR 70,98,979/- (Rupees seventy lakhs ninety-eight thousand nine hundred seventy-nine only) to the Corporate Debtor on the dates narrated in the Payment Schedule forming part of the Agreement for Construction dated 21.08.2013.

10. The Vendor assures and declares that it has perfect, lawful, absolute marketable and alienable right and title to the scheduled property. Thereby affirms that the title to the property hereunder agreed to be conveyed, shall be free from any encumbrances, charge, lien or deficiency of any manner at the time of execution of the sale deed.

11. The Financial Creditors undertakes to bear the common expenses for maintenance of the property along with other purchasers of similar undivided shares of land in the property. It was further agreeing and understands by the financial creditor that they shall not be entitled to claim partition of this share in the land in property as described in scheduled property and the same shall always remain undivided without being partitioned.

12. The Financial Creditors agrees that the agreement for sale and agreement for construction entered by them with the Corporate Debtor, though distinct and separate, are interdependent and the non-performance of one shall result in the breach of the other.

In the Agreement of construction, the financial creditors agreed to pay the amount without demand and default to the Corporate Debtor. Further agrees to pay



extra charges for any alteration, modification that subject to such alteration/ modification through local cheque or Demand Draft drawn in favour of DEWA PROJECTS PVT LTD. Payable at Ernakulam or through electronic transfer to credit of the designated bank account of Corporate Debtor.

14. The Corporate Debtor, undertakes to ensure that the construction is completed within 36 months from the date of Agreement of Construction, i.e., 21.08.2013. However, agrees to pay a compensation of INR 10,000/- (Rupees Ten thousand only) for every month of delay in completion of the construction beyond the agreed date of completion, whereas, such delay is caused by circumstances and reasons attributable solely to the Corporate Debtor (specified in para 32 of Agreement for Construction), and subject to the Financial Creditor making the full payment fulfilling his part of the contract in all respects, including payment of all instalments in time.

15. The Corporate Debtor undertakes to ensure handing over possession of constructed apartment to the Financial Creditor within 30 days after completion or receipt of the entire payment by the Financial Creditor, whichever is later.

16. It is submitted by the Financial Creditor that as per the Agreement, the possession of the said flat had to be handed over latest by the year 2016. It is stated that despite having received the almost 38% of the purchase value of the flats towards the advance amount, the Corporate debtor has till date neither handed over the possession of the said unit nor has refunded the amount paid by the Financial Creditor.

17. It is further submitted by the financial creditor that more than 72 months have elapsed and the possession of said apartment has not been given to the applicant till date. Therefore, the applicant had asked the Corporate debtor for compensation for



the delayed possession of the said apartment as per the rules and provisions laid down under IBC,2016.

18. As the Corporate debtor fails to repay the loan of Rs.366.68 Crores as financial assistance as per the Joint Deed of Term Loan Agreement executed on 02.08.2005 the consortium of Banks/Financial institutions who provided the financial assistance initiated SARFAESI proceedings with no alternative remedy of efficacious nature. Aggrieved by this, the home-buyers formed an association named 'The Dewa Investors Association' and preferred a Writ Petition before the Hon'ble High court of Kerala in WP(Civil) No. 34521 of 2017 on 24.10.2017 for staying further proceedings which is disposed of on 20.03.2018. Aggrieved by this the respondent in the above stated Writ Petition filed an Appeal vide WA No. 999 of 2018 before the Hon'ble High Court of Kerala. The Division Bench disposed of the Appeal directing the appellants to specifically mention in the auction notice the existence of a claim of home buyers, who advanced money for purchase of apartments to the tune of about INR 33.5 Crores. Further the consortium of banks led by Union Bank is proceeding with the sale of immovable properties of the Corporate Debtor, under SARFAESI Act 2002. Even though, they have acknowledged the claims made by the home buyers to the tune of 33.5 crores as per the Judgment in WA 999 of 2019 rendered by the Hon'ble High Court of Kerala, the financial creditors decided to file a petition before this Bench to initiate IBC proceedings against the Corporate Debtor.

19. The Counsel for the Financial Creditor has sent a copy of the petition to the Corporate Debtor prior to the filing of the said application on 24.06.2019, which was duly delivered on 25.06.2019. A copy of the courier receipt and its acknowledgement

was filed by the counsel for the Financial Creditor. Despite listing of this



application on 22.08.2019, 05.09.2019, neither the Corporate Debtor nor the counsel appeared before this Bench.

FINDINGS

20. On perusal of records submitted by the Financial Creditor/home buyers and also as per Sub Section 5(a) of Section 7 of the code, the application filed by the applicant/financial Creditor has to be admitted on satisfaction that:

- (i) Default has occurred;
- (ii) Application is complete, and
- (iii) No disciplinary proceeding against the proposed IRP is pending.

21. Learned Counsel for the applicant has rightly argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, he has submitted that the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

22. In view of above, the instant petition deserves to be admitted. There is overwhelming evidence to prove default. The petition, therefore, is admitted.

23. The applicant has not specified the name of the resolution professional, therefore, this Bench, at this moment **appoints Mr. Vinod Padinhare Veetil with registration**



number **IBBI/IPA-002/IP-N00203/2017-18/10657** and (Email: **vinodpv@gmail.com**) as the Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. IRP cost shall be borne by the Financial Creditors. A specific consent is to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 herein.

24. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.

25. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

26. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

27. The Interim Resolution Professional shall perform all his functions religiously and

strictly which are contemplated, inter alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and inform the progress of the resolution plan and compliance of the directions



of this order within 30 days to this Bench. The liberty is granted to intimate even at an early date, if need be. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation by the ex-management or its ex-directors the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

28. We direct the Financial Creditor to deposit a sum of Rs. 2 lakhs with the Interim Resolution Professional namely Mr. Vinod Padinhare Veettil to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days for the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.



A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall

also be forwarded to IBBI for its records. Further the IRP above named and the Registrar of Companies be also furnished with copy of this order forthwith by the Registry.

Dated this the 13th day of September, 2019

Sd/-
(Veera Brahma Rao Arakapudi)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

CERTIFIED TO BE TRUE COPY

[Handwritten Signature]
Deputy Registrar
National Company Law Tribunal
Kochi Bench, Kochi - 682 021
16/09/2019.

Memo No. IBA/23/KOB/2019-477...

Dated 16.09.2019

To

1. M/s Ninan & Mathew, Advocate,s, Second floor, 42/1686, D20, Empire Building, High Court East End, Kochi-18. (**Counsel for applicant**)
2. M/s Dewa Projects Pvt. Ltd. Registered Office, S.S.Kovil Road, Thampanoor PO, Vanchiyoor, Thiruvananthapuram-1. (**Respondent**)
3. Mr. Vinod Padinhare Veetil, Reg.No.IBBI/IPA-002/IP-N00203/2017-18/10657, 66/1058, First Floor, Veeekshanam Road, Ernakulam North, Cochin-682018 (**Interim Resolution Professional**).
4. Director, Insolvency and Bankruptcy Board of India, 7th floor, Mayoor Bhawan, Shanker Market, Connaught Circus, New Delhi-110 001.
5. The Registrar of Companies, Company Law Bhawan, BMC Road, Thrikkakara, Kakkanad, Cochin-682021.

